

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 3436 of 2001 (MS)

Old No. 26743 of 1992

**State of U.P. & Govt. Fruits Preservation
Centre, Dehradun Petitioners**

Versus

**1. Sri Chand Narain Saklani
2. Sri Mahesh Narain Saklani
3. Sri Anil Narain Saklani
4. 3rd Addl. District Judge, Dehradun
5. Addl. District Magistrate (E) Dehradun..... Respondents**

Writ Petition No. 3435 of 2001 (MS)

**State of U.P. & Govt. Fruits Preservation
Centre, Dehradun Petitioners**

Versus

**1. Sri Chand Narain Saklani
2. Sri Mahesh Narain Saklani
3. Sri Anil Narain Saklani
4. 3rd Addl. District Judge, Dehradun
5. Addl. District Magistrate (E) Dehradun..... Respondents**

Writ Petition No. 4154 of 2001 (MS)

**1. Sri Chand Narain Saklani
2. Sri Mahesh Narain Saklani
3. Sri Anil Narain Saklani Petitioners**

1. **3rd Addl. District Judge, Dehradun**
2. **Addl. District Magistrate, Dehradun**
3. **State of U.P.**
4. **Rajkiya Phal Sanrakchan Kendra,
17 Rajpur Road, Dehradun Respondents**

Dated: December 22, 2004

**Sri Nand Prasad, Standing counsel for the petitioners.
Sri B.P. Nautiyal, Advocate for the respondents**

Hon. Rajesh Tandon, J.

Heard the learned counsel for the parties.

All the writ petitions have been filed against the orders dated 1.5.1992 and 25.6.1991 passed by the Addl. District Judge, Dehradun and Prescribed Authority, Dehradun respectively. Writ petition No. 3435 of 2001 and 3436 of 2001 have been filed for setting aside the order of enhancement of rent and Writ Petition No. 4154 of 2001 has been filed for further enhancement of rent.

Briefly stated, an application was filed by the respondent under section 21 (8) of U.P. Act No. 13 of 1972 praying for enhancement of rent in respect of premises No. 17 , Rajpur Road, Dehradun, area 1177 Sq. ft. Out o which 1493 Sq. ft is the covered area. According to the case of the landlord originally rent was Rs.125/- per month. According to the landlord premises in dispute is valued at Rs. Four lakh and 1/10 of the same comes to Rs.40,000/-. Thus the monthly rent of the building comes to 1/12 of Rs.40,000/- i.e. Rs.3333.34.

The petitioners have filed objection and have disputed the valuation as claimed by the landlord. According to the State valuation of the building is Rs.50,000/- to Rs.60,000/- only.

The landlord is order to prove the valuation has filed the valuation report of Manocha & Associates, 72 Ansari Marg, Dehradun. He has valued the land for Rs.2,37,600.00 and valuation of the building for Rs.4,34,412.00. The defendants filed the valuation report of Sri Suraj Prakash Agarwal. He has valued the building for Rs.1,44,000.00 to the extent of constructed portion alone. Before the prescribed authority evidence was laid to the extent that according to the market rate a sum of Rs.1,500/- Sq. M. has been fixed by the Collector. The prescribed authority has taken into consideration of area of 152.40 Sq.M. and @ Rs.750/- per Sq.M. The prescribed authority valued the building for Rs.1,96,812/- and calculated the valued of the land for Rs.1,18,8000/-. He has also deducted 30% depreciation from the value of the building. The prescribed authority has calculated the rent to the following effect:

अतः निर्मित भवन की कीमत 1,44,000.00 सही मानते हुए इसे स्वीकार किया जाता है। इस प्रकार भूमि व भवन की अलग अलग कीमत निम्न प्रकार स्वीकार की जाती है

भूमि की कीमत अंकन	1,18,800.00
भवन की कीमत अंकन	<u>1,44,000.00</u>
योग	2,62,800.00

अधिनियम की धारा 21 (8) के प्रावधानों के अनुसार बाजारु कीमत के दसवे भाग का बारहवों मान मासिक किराये के रूप में स्वीकार किया जाता है। 2,62,800.00 का दसवा मान अंकन 26,080.00 तथा इसका बारहवों भाग 2,173.33 अर्थात 2,175.00 आता है जिसे मैं उचित मान कर मासिक किराये के रूप में स्वीकार करता हूँ। नजूल भूमि होने से उसके मूल्यांकन पर कोई असर नहीं पड़ता है।

The landlord has filed the appeal being appeal no.53 of 1991 praying for fixation to the extent of Rs. 3,333.34 paisa per month. State of U.P. has also filed the appeal being appeal no. 43 of 1992.

The appellate Court has fixed the rent for Rs.2,600/- per month. Relevant paragraph of the judgment in appeal is quoted below:

11. Taking the marked value of the disputed accommodation as Rs. 1,96,000/- and that of the land as Rs. 1,18,800/- totaling Rs.3,14,800/-, the monthly rent of the disputed accommodation comes to Rs.2632/- say Rs.2600/- per month plus statutory taxes admissible under Section 7 of the U.P. Act XIII of 1972.

The application was filed as back as in the year 1990 and since 1990 the landlord has become entitled to enhance the rent at least thrice and in view of that I do not find any infirmity in the order passed by the two courts below. So far as the fixation of the rent is concerned the same should have been made keeping in view the cost of the land as well as the constructed portion.

Counsel for the applicant has submitted that the land being a nazool land, the calculation has been wrongly made by the prescribed authority.

A perusal of the record shows that the renewal of the lease was made in favour of the landlord upto March 31, 2020.

The appellate court has taken into consideration the valuation of the land on the basis of the possessory title in the disputed land being the permanent allottee. The market value has been calculated to the extent of Rs. 1,18,000/- and a sum of Rs. 1,96,000/- towards the valuation of the disputed premises after deducting the depreciation at the rate of 30% (thirty percent), the valuation was fixed to the extent of Rs. 1,44,000/-. The valuation has been calculated on the basis of government approved policy Sri Suraj Prakash Agarwal taking the aforesaid rate of Rs. 100 per sq. feet, whereas the valuer has determined the valuation at the rate of Rs. 165/- per sq. feet and no defect

has been pointed out in the report. The appellate authority, therefore, after taking into consideration the market value of the accommodation to the extent of Rs. 1,96,000/- and the rent 1,18,000/- (total being 3,14,800/-) has come to the conclusion that the monthly rent will come to Rs. 2,600/- .

It has come in the evidence on the record that the land is 1704 sq. feet, which comes to Rs. 158.40 sq. metre and the circle rate is Rs. 1,500/- per sq. metre and the Prescribed Authority has taken into consideration the half of the circle rate i.e. Rs. 750/- per sq. metre and taking into consideration the area of 158.40 sq. metre the calculation has been made to the extent of Rs. 1,18,800/- towards the land.

The tenant himself has calculated the valuation of the constructed portion to the extent of Rs. 1,44,000/-, whereas the valuation according to the landlord has been shown to be Rs. 1,96,812/-. The prescribed authority, therefore, has rightly come to the conclusion that the valuation shown by the tenant to the extent of Rs. 1,44,000/- is almost similar and therefore, the prescribed authority has taken into consideration the valuation to be Rs. 2,62,800/- and 1/10th of the same, comes to Rs. 26,080/- and the rent has been calculated to be Rs. 2,175/-. There is slight change by the appellate court and instead of Rs. 2,175/- the rent has been fixed on the basis of the market value of the disputed accommodation to Rs. 1,96,000/- and according to that, rent comes to Rs. 2,600/- per month.

I find no infirmity in enhancing the rate of rent to the extent of Rs. 2,600/- as the prescribed authority has also come to the conclusion that after the depreciation of 30% (thirty percent) on the valuation of 2,81,160/- the valuation comes to Rs. 1,96,812.

Since the increase was made in the year, 1991 and more than 12 years have already passed, the right to enhance the rent has further accrued twice sine then, therefore, I find no infirmity in the order passed by the appellate court so as to interfere under Article 226/227 of the Constitution of India.

Allahabad High Court in Punjab and Sindh Bank v. VIIth ADJ, Bulandshahar and Others 2000 (2) A.R.C. page 431 placed reliance on the judgment of the Supreme Court as well as various High Courts, which has held as under:-

"It is well settled in law that the value of the land on which the building is situated, is to be included in the market value of the building while determining the market value under the aforesaid proviso. A reference in this regard may be made to the decision in Central Bank of India and others v. 2nd Additional District Judge, Jhansi and others, 1989 (1) ARC 340 (SC); State of U.P. and others v. VIIth Additional District Judge, Saharanpur and others, 1992 (2) ARC 571 (SC); State of U.P. and others vs. VII Addl. District Judge, Saharanpur and others 1992 (1) ARC 265 and State of U.P. v. Roop Kishore Tandon and others, 1987 (2) ARC 359"

It has been held that while calculating the rent the value of the land as well as the value of the constructed portion both should have been taken into consideration. In my opinion there is no infirmity in the order passed by both the courts below.

In view of the aforesaid facts and circumstances, no interference is required under section 226 and 227 to the Constitution of India.

It has been held in Indian Overseas Bank Vs. VIIIth Additional District Judge, Muzaffarnagar 2002 ARC (1) 586. It reads as under:-

4 *"The very fact that the original application was filed in the year 1990 and the writ petition is being heard in the year 2002 in between at least two more revisions ought to have been taken place but for the pendency of the present writ petition nothing has been done."*

5 *" I have gone through the order of the Rent Control and Eviction Officer as well as the for the Appellate Authority and in my opinion both the authorities have recorded the findings of fact which do not warrant any interference under Article 226 of the Constitution of India by this Court. It is also settled that even if two views are possible and the authority has taken one view, that is not a ground for interference under Article 226 of the Constitution."*

It has further been held in State of U.P. Vs. Ratan Kishore Johri and another 2002 ARC (1) 565. It reads as under:-

"In the present case there were two reports with regard to the market value, one by approved Government Valuer and other by non- approved valuer. In may opinion authorities have committed no error much less error on the face of record so as to warrant interference under Article 226 of the Constitution of India, if he has accepted the report of the Government approved valuer."

Consequently, both the petitions filed by the tenants are dismissed. However, time up to 28th February 2005 is given to the petitioners to pay the entire arrears of rent, provided undertaking is given before the prescribed authority by

15.1.2004. In case no undertaking is furnished, the landlord shall be at liberty to realise the rent in due course of law.

The writ petition filed by the landlord for further enhancement of rent is also dismissed. However, the landlord shall be at liberty to file a fresh application under section 21 (8) of U.P. Act No. 13 of 1972, for further enhancement of rent.

No order as to costs.

(Rajesh Tandon, J.)

22.12.2004

*Dhyani